IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WA.No. 663 of 2007()

AGAINST THE JUDGEMENT IN WPC.6329/2007 Dated 26/02/2007
.....

APPELLANTS/ PETITIONERS:
---

1. GOOD EARTH HARMONY OWNERS ASSOCIATION,
AYSHA ROAD, VYTTILLA P.O.,
KOCHI-682019 REPRESENTED BY ITS SECRETARY.

2. BINU.K.JOSE, 32/3007, F3,
GOOD EARTH HARMONY,
AYSHA ROAD, KOCHI-19.

BY ADV. SRI.K.K.M. SHERIF
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS/RESPONDENTS:
---

1. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI.

2. THE TAHSILDAR, KANAYANNUR TALUK,
ERNAKULAM.

3. THE VILLAGE OFFICER,
POONITHURA VILLAGE, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI MATHEW.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

W.A. No. 663 OF 2007

.....

Dated this the 1st June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Questioning the correctness or otherwise of the judgment delivered by the learned single Judge in W.P.(C) 6329 of 2007 dated 26.02.2007, the petitioners are before us in this appeal.

2. The only point raised for our consideration in this appeal is whether the Tahsildar is justified in passing the impugned order without adverting to the detailed statement of objections filed by the respondents/appellants herein pursuant to the notice received by them, from the Tahsildar, under the provisions of Kerala Building Tax Act , 1975.

3. In the present case, the first appellant is an association and 2nd appellant is one of the partners of the 1st appellant..

4. A notice has been issued by the Tahsildar inter alia proposing to assess the flats owned by the first appellant-association for levy of tax under the provisions of the Kerala Building Tax Act, 1975. After the receipt of notice, the appellants had filed a detailed objection to the said notice and also requested the Tahsildar to drop the proceedings. It is the grievance of the appellants before us

that the second respondent, without adverting to any one of the defence raised by the appellants, has proceeded to issue notice proposing to tax the flats owned by the association. According to the petitioners/appellants, the action of the second respondent is in total violation of principles of natural justice .

5. The admitted facts are:

The second respondent herein had issued a notice proposing to tax the flats owned by the first appellant-association under the provisions of the Kerala Building Tax Act, 1975. The appellants had filed a detailed statement of objections. The second respondent ought to have considered the objections and passed appropriate orders. Without doing so, the Tahsildar has passed the impugned order. This action of the second respondent, in our opinion, is in violation of one of the facets of the principles of natural justice. Therefore, the aforesaid order cannot be sustained by us in this appeal . The order of the learned single Judge who has relegated the petitioners/appellants to file appropriate appeal also cannot be sustained in this appeal. .

6. In view of the above discussions, in our opinion, the orders passed by the Tahsildar, the second respondent herein and the orders passed by the learned single Judge cannot be sustained by us . Accordingly, the following:

O R D E R

i) Writ Appeal is allowed.

ii) The impugned judgment delivered by the learned single Judge is set aside.

iii) The orders passed by the Tahsildar under Ext. P6 (a) (1) and the demand notice under Ext. P6(a) (2) are set aside.

iv) The matter is remitted back to the Tahsildar to redo the matter in accordance with law. The appellants-association is also permitted to file its additional detailed statement of objections within 30 days from today. The Tahsildar is directed to consider the objections already filed and also the additional objections that may be filed and pass appropriate orders in accordance with law.

v) All the contentions of both the parties are left open.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk